IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1644 of 1997

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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IA SAMA

Versus

MANAGING DIRECTOIR

Appearance:

MR PH PATHAK for Petitioner No. 1-2

MR PARESH UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 11/09/2002

ORAL JUDGEMENT

1. This is a petition under Article 226 of the Constitution of India wherein the petitioners ventilate the grievance against the respondent-Corporation in not extending the benefits of the Government Resolution dated 17th October 1988 (Annexure-C) to the petitioners, as it has been extended to other departments or divisions of the State Government. The petitioners also contend that even if and even after the benefits of the said G.R. are

made applicable to them, on the facts and circumstances of the case and on the basis of the correct law applicable to such facts and circumstances, the benefits of the said G.R. should be made available to them on completion of 3 years service as daily-wagers or daily-rated workman in the employment of the respondent Corporation.

2. It is not necessary to examine in greater depth the contentions of the petitioners inasmuchas the same are substantially governed by the decisions of this court and Supreme Court which will be dealt with hereinafter. Suffice it to say that the grievances of the petitioners arise from the fact that each of them being a dailywager/daily-rated workman in the employment of the respondent Corporation, have been continued as such over many years and almost indefinitely, in spite of the fact that the Government Resolution (Annexure-C to the petition) has addressed itself to this unethical and illegal practice and has granted suitable relief to such daily-rated workmen.

3. It is in this context that the petitioners firstly prayed that the benefit of the GR at Annexure-C to the petition should be extended to them, and that all such benefits being available to the petitioners, the arrears that may become due be paid together with interest at the rate of 18% per annum.

4. In the context of this prayer it is sufficient to state that the respondents have not only decided to extend the benefits of the said G.R. to the petitioners, but as noted by various interim orders passed in the present petition, have also commenced the payment of arrears that may be due to the petitioners. Thus, no specific order or direction is required in the context of this prayer except that the arrears that may be due to the petitioners on the application of the G.R. to the petitioners, as decided by the present judgement and order, shall be paid as expeditiously as possible and preferably within 12 months from today.

5. The second and incidental controversy which arises is on account of the petitioners' submission that the petitioners should be treated as regular employees on their completion of 3 years as daily-rated workmen. However, inspite of convoluted and detailed submissions, what ultimately emerges is that the petitioners seek to rely upon an earlier Division Bench judgement of this Court, which does not in any manner confer upon the daily rated workman the status of a regular employee. In other

words, even in spite of lengthy service as daily-rated workmen, the law does not require or permit that the employer be directed to absorb such daily-rated workmen as regular employees. In this context, the aforeseaid Division Bench decision shall be discussed hereinafter. Consequently this prayer viz. the prayer made at paragraph 12(D) requires to be rejected.

6. This takes us to the main controversy in the present petition. As aforesaid, although the petitioners have claimed that they are entitled to the aforesaid benefit of the G.R. which is not extended to them, the interim orders passed in the petition clearly indicate that the benefits thereof are in fact being extended to them. This is also confirmed by learned counsel for the petitioners.

6.1 However, the contention of the petitioners goes beyond merely obtaining the benefits of the G.R., as provided by the G.R. What the petitioners contend is that as per the G.R. in question, a daily-rated workman who has completed 5 years of service as a daily-rated workman would be entitled to the minimum scale as paid to a regular employee in the category of work which he was performing.

6.2 This contention and/or relief sought is primarily based upon an earlier Division Bench judgement in SCA Nos.3547/91, 5100/91, 6414/92 and 6415/92, decided on July 13/14, 1993.

6.3 A small and minor observation requires to be made - that in the aforesaid decision the respondent was the Gujarat Water Supply and Sewerage Board, whereas in the present petition the respondent is Gujarat Water Resources Development Corporation. This distinction is merely noted for the sake of accuracy, although it makes no difference to the applicability of the principle laid down by the Division Bench. In the said decision, it was the very same G.R. dated 17th October 1998, which was the subject matter of interpretation, whereas in the present petition the same G.R. is at Annexure-C.

6.4 In the said decision the petitioners had contended that the benefit of the G.R. was available for the first time to a daily-rated employee who has completed 5 years of service as such, and not before. It was in this context that the controversy was heard and decided by the Division Bench. After considering various decisions of the Supreme Court, cited by both the sides before the Bench, the Bench observed in paragraph 29 of

the judgement as under:

"...we have come to the conclusion that the scheme framed by the respondent-board would answer the test of reasonableness and rationally if the daily rated employees are given the minimum time-scale of pay on completion of 3 years, and thereafter the scheme is operated as such."

In paragraph 30 of the said decision the Bench found and directed as under:

"In view of the aforesaid findings we direct the respondents to pay to the petitioning employees who have put in more than 3 years service, the minimum of the pay-scale for the posts on which they are working and if any employee who has not put in 3 years service, such a petitioning employee shall be paid the regular time-scale of pay after he completes 3 years."

6.5 The aforesaid decision was challenged by the respondent therein by way of SLP filed in the Supreme Court being SLP (Civil) No.4650/95, which was dismissed on 31st September 1995, a copy of which order is part of Annexure-A to this petition.

7. In the light of the aforesaid decision of the Division Bench of this Court, which has also been followed in principle by another Single Judge of this Court in SCA No.6918/92 by his judgement and order dated 23rd March 2001, I have no hesitation in holding that the very same principles which weighed with and which were enunciated by the Division Bench would squarely apply to the facts and circumstances in which the petitioners are placed.

8. The fact that the present respondent has already chosen and adopted to apply the aforesaid GR to the petitioners demonstrates, on a question of fact, that the said GR would also apply to the present petitioners. Thus, if the very same GR has been interpreted and to a limited extent modified by the earlier decision of the Division Bench, there is absolutely no reason why the same modification in the said GR should not be made applicable to the present petitioners.

9. In view of the aforesaid finding and discussion, it is directed that the respondents shall pay to the concerned petitioners, who have put in more than 3 years

service as daily-rated workmen, the minimum pay-scale in respect of the posts on which such petitioners were working, and in the case of such employees who have not put in 3 years of service, they shall be paid the minimum of the pay-scale as aforesaid on the completion of 3 years as daily-rated workmen. It is further directed that the arrears which were due to the petitioners on the G.R. at Annexure-C being made applicable to them shall be paid before 31st March 2003. It is further directed that any further arrears that may be payable to such concerned workmen by virtue of the present decision and order shall be paid to the concerned workmen before 30th September 2003.

10. It is further clarified that the benefit of the present order shall be available to those workmen who have in fact completed 3 years as daily-rated workmen on the date of the petition and those who shall complete such 3 years thereafter.

11. Rule is, therefore, partly made absolute in the aforesaid terms with no order as to costs.

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